

AMENDED IN SENATE MAY 3, 2005
AMENDED IN SENATE APRIL 19, 2005
AMENDED IN SENATE MARCH 29, 2005

SENATE BILL

No. 292

Introduced by Senator Speier

February 16, 2005

An act to amend Sections 138.7 and 5307.1 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 292, as amended, Speier. Workers' compensation.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment.

Existing law prohibits a person or public or private entity who is not a party to a claim for workers' compensation benefits from obtaining individually identifiable information, as defined, that is obtained or maintained by the division on that claim, except that, among other things, residence addresses may be disclosed to any person for a journalistic purpose.

This bill, instead, would make this exception applicable to a person who ~~can prove entitlement~~ *is entitled* to claim immunity from prosecution for contempt under the media shield law at the time the request for disclosure is made.

Existing law requires the administrative director to adopt and revise periodically a medical fee schedule for specified services, drugs, fees, and goods, other than physician services. Existing law provides that except for pharmacy services and drugs that are not otherwise covered

by a Medicare fee schedule payment for facility services, the maximum reasonable fees shall be 100% of fees prescribed in the relevant Medi-Cal payment system.

This bill would prescribe the formula to be used for reimbursement to pharmacies, practitioners, and other entities for a drug that is not found in the Medi-Cal database.

Existing law provides that if the administrative director determines that a pharmacy service or drug is not covered by a Medi-Cal payment system, the administrative director shall establish maximum fees for that item.

This bill would require that these maximum fees be consistent with the new reimbursement formula.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 138.7 of the Labor Code is amended to
2 read:

3 138.7. (a) Except as expressly permitted in subdivision (b), a
4 person or public or private entity not a party to a claim for
5 workers' compensation benefits may not obtain individually
6 identifiable information obtained or maintained by the division
7 on that claim. For purposes of this section, "individually
8 identifiable information" means any data concerning an injury or
9 claim that is linked to a uniquely identifiable employee,
10 employer, claims administrator, or any other person or entity.

11 (b) (1) The administrative director, or a statistical agent
12 designated by the administrative director, may use individually
13 identifiable information for purposes of creating and maintaining
14 the workers' compensation information system as specified in
15 Section 138.6.

16 (2) The State Department of Health Services may use
17 individually identifiable information for purposes of establishing
18 and maintaining a program on occupational health and
19 occupational disease prevention as specified in Section 105175
20 of the Health and Safety Code.

21 (3) (A) Individually identifiable information may be used by
22 the Division of Workers' Compensation, the Division of
23 Occupational Safety and Health, and the Division of Labor

1 Statistics and Research as necessary to carry out their duties. The
2 administrative director shall adopt regulations governing the
3 access to the information described in this subdivision by these
4 divisions. Any regulations adopted pursuant to this subdivision
5 shall set forth the specific uses for which this information may be
6 obtained.

7 (B) Individually identifiable information maintained in the
8 workers' compensation information system and the Division of
9 Workers' Compensation may be used by researchers employed
10 by or under contract to the Commission on Health and Safety and
11 Workers' Compensation as necessary to carry out the
12 commission's research. The administrative director shall adopt
13 regulations governing the access to the information described in
14 this subdivision by commission researchers. These regulations
15 shall set forth the specific uses for which this information may be
16 obtained and include provisions guaranteeing the confidentiality
17 of individually identifiable information. Individually identifiable
18 information obtained under this subdivision shall not be
19 disclosed to commission members. No individually identifiable
20 information obtained by researchers under contract to the
21 commission pursuant to this subparagraph may be disclosed to
22 any other person or entity, public or private, for a use other than
23 that research project for which the information was obtained.
24 Within a reasonable period of time after the research for which
25 the information was obtained has been completed, the data
26 collected shall be modified in a manner so that the subjects
27 cannot be identified, directly or through identifiers linked to the
28 subjects.

29 (4) The administrative director shall adopt regulations
30 allowing reasonable access to individually identifiable
31 information by other persons or public or private entities for the
32 purpose of bona fide statistical research. This research shall not
33 divulge individually identifiable information concerning a
34 particular employee, employer, claims administrator, or any other
35 person or entity. The regulations adopted pursuant to this
36 paragraph shall include provisions guaranteeing the
37 confidentiality of individually identifiable information. Within a
38 reasonable period of time after the research for which the
39 information was obtained has been completed, the data collected

1 shall be modified in a manner so that the subjects cannot be
2 identified, directly or through identifiers linked to the subjects.

3 (5) This section shall not operate to exempt from disclosure
4 any information that is considered to be a public record pursuant
5 to the California Public Records Act (Chapter 3.5 (commencing
6 with Section 6250) of Division 7 of Title 1 of the Government
7 Code) contained in an individual's file once an application for
8 adjudication has been filed pursuant to Section 5501.5.

9 However, individually identifiable information shall not be
10 provided to any person or public or private entity who is not a
11 party to the claim unless that person identifies himself or herself
12 or that public or private entity identifies itself and states the
13 reason for making the request. The administrative director may
14 require the person or public or private entity making the request
15 to produce information to verify that the name and address of the
16 requester is valid and correct. If the purpose of the request is
17 related to preemployment screening, the administrative director
18 shall notify the person about whom the information is requested
19 that the information was provided and shall include the following
20 in 12-point type:

21 "IT MAY BE A VIOLATION OF FEDERAL AND STATE
22 LAW TO DISCRIMINATE AGAINST A JOB APPLICANT
23 BECAUSE THE APPLICANT HAS FILED A CLAIM FOR
24 WORKERS' COMPENSATION BENEFITS."

25 Any residence address, including street address, apartment
26 number, city, and Zip Code, is confidential and shall not be
27 disclosed to any person or public or private entity except to a
28 party to the claim, a law enforcement agency, an office of a
29 district attorney, governmental agency, or a person who ~~can~~
30 ~~prove entitlement~~ *is entitled* to claim immunity from prosecution
31 for contempt under Section 1070 of the Evidence Code or
32 subdivision (b) of Section 2 of Article I of the California
33 Constitution, at the time the request for disclosure is made.

34 Nothing in this paragraph shall be construed to prohibit the use
35 of individually identifiable information for purposes of
36 identifying bona fide lien claimants.

37 (c) Except as provided in subdivision (b), individually
38 identifiable information obtained by the division is privileged
39 and is not subject to subpoena in a civil proceeding unless, after
40 reasonable notice to the division and a hearing, a court

determines that the public interest and the intent of this section will not be jeopardized by disclosure of the information. This section shall not operate to restrict access to information by any law enforcement agency or district attorney's office or to limit admissibility of that information in a criminal proceeding.

(d) It shall be unlawful for any person who has received individually identifiable information from the division pursuant to this section to provide that information to any person who is not entitled to it under this section.

SEC. 2. Section 5307.1 of the Labor Code is amended to read:

5307.1. (a) (1) The administrative director, after public hearings, shall adopt and revise periodically an official medical fee schedule that shall establish reasonable maximum fees paid for medical services, drugs and pharmacy services, health care facility fees, home health care, and all other treatment, care, services, and goods described in Section 4600, other than physician services. Except for physician services, all fees shall be in accordance with the fee-related structure and rules of the relevant Medicare and Medi-Cal payment systems, provided that employer liability for medical treatment, including issues of reasonableness, necessity, frequency, and duration, shall be determined in accordance with Section 4600.

(2) Commencing January 1, 2004, and continuing until the time the administrative director has adopted an official medical fee schedule in accordance with the fee-related structure and rules of the relevant Medicare payment systems, except for the components listed in subdivision (j), maximum reasonable fees shall be 120 percent of the estimated aggregate fees prescribed in the relevant Medicare payment system for the same class of services before application of the inflation factors provided in subdivision (g), except that for pharmacy services and drugs that are not otherwise covered by a Medicare fee schedule payment for facility services, the maximum reasonable fees shall be 100 percent of fees prescribed in the relevant Medi-Cal payment system.

(3) Pharmacy services and drugs shall be subject to the requirements of this section, whether furnished through a pharmacy or dispensed directly by the practitioner or other entity. The reimbursement to a pharmacy, its agent or assignee, or to a

1 practitioner or other entity, for a drug that is not found in the
2 Medi-Cal database shall be the amount that would be allowed for
3 the generic equivalent of the drug. If no generic equivalent is
4 available, the reimbursement amount shall be not more than 100
5 percent of the average wholesale price of the underlying drug,
6 utilizing the National Drug Code of the original manufacturer
7 without regard to the National Drug Code for the drug as
8 repackaged for distribution, plus the dispensing fee allowed by
9 Medi-Cal.

10 (4) Upon adoption by the administrative director of an official
11 medical fee schedule pursuant to this section, the maximum
12 reasonable fees paid shall not exceed 120 percent of estimated
13 aggregate fees prescribed in the Medicare payment system for the
14 same class of services before application of the inflation factors
15 provided in subdivision (g).

16 (b) In order to comply with the standards specified in
17 subdivision (f), the administrative director may adopt different
18 conversion factors, diagnostic related group weights, and other
19 factors affecting payment amounts from those used in the
20 Medicare payment system, provided estimated aggregate fees do
21 not exceed 120 percent of the estimated aggregate fees paid for
22 the same class of services in the relevant Medicare payment
23 system.

24 (c) Notwithstanding subdivisions (a) and (d), the maximum
25 facility fee for services performed in an ambulatory surgical
26 center, or in a hospital outpatient department, may not exceed
27 120 percent of the fee paid by Medicare for the same services
28 performed in a hospital outpatient department.

29 (d) If the administrative director determines that a medical
30 treatment, facility use, product, or service is not covered by a
31 Medicare payment system, the administrative director shall
32 establish maximum fees for that item, provided that the
33 maximum fee paid shall not exceed 120 percent of the fees paid
34 by Medicare for services that require comparable resources. If the
35 administrative director determines that a pharmacy service or
36 drug is not covered by a Medi-Cal payment system, the
37 administrative director shall, consistent with subdivision (a),
38 establish maximum fees for that item. However, the maximum
39 fee paid shall not exceed 100 percent of the fees paid by

1 Medi-Cal for pharmacy services or drugs that require comparable
2 resources.

3 (e) Prior to the adoption by the administrative director of a
4 medical fee schedule pursuant to this section, for any treatment,
5 facility use, product, or service not covered by a Medicare
6 payment system, including acupuncture services, or, with regard
7 to pharmacy services and drugs, for a pharmacy service or drug
8 that is not covered by a Medi-Cal payment system, the maximum
9 reasonable fee paid shall not exceed the fee specified in the
10 official medical fee schedule in effect on December 31, 2003.

11 (f) Within the limits provided by this section, the rates or fees
12 established shall be adequate to ensure a reasonable standard of
13 services and care for injured employees.

14 (g) (1) (A) Notwithstanding any other provision of law, the
15 official medical fee schedule shall be adjusted to conform to any
16 relevant changes in the Medicare and Medi-Cal payment systems
17 no later than 60 days after the effective date of those changes,
18 provided that both of the following conditions are met:

19 (i) The annual inflation adjustment for facility fees for
20 inpatient hospital services provided by acute care hospitals and
21 for hospital outpatient services shall be determined solely by the
22 estimated increase in the hospital market basket for the 12
23 months beginning October 1 of the preceding calendar year.

24 (ii) The annual update in the operating standardized amount
25 and capital standard rate for inpatient hospital services provided
26 by hospitals excluded from the Medicare prospective payment
27 system for acute care hospitals and the conversion factor for
28 hospital outpatient services shall be determined solely by the
29 estimated increase in the hospital market basket for excluded
30 hospitals for the 12 months beginning October 1 of the preceding
31 calendar year.

32 (B) The update factors contained in clauses (i) and (ii) of
33 subparagraph (A) shall be applied beginning with the first update
34 in the Medicare fee schedule payment amounts after December
35 31, 2003.

36 (2) The administrative director shall determine the effective
37 date of the changes, and shall issue an order, exempt from
38 Sections 5307.3 and 5307.4 and the rulemaking provisions of the
39 Administrative Procedure Act (Chapter 3.5 (commencing with
40 Section ~~41370~~ 11340) of Part 1 of Division 3 of Title 2 of the

Government Code), informing the public of the changes and their effective date. All orders issued pursuant to this paragraph shall be published on the Internet Web site of the Division of Workers' Compensation.

(3) For the purposes of this subdivision, the following definitions apply:

(A) "Hospital market basket" means the input price index used by the federal Centers for Medicare and Medicaid Services to measure changes in the costs of providing inpatient hospital services provided by acute care hospitals that are included in the Medicare prospective payment system.

(B) "Hospital market basket for excluded hospitals" means the input price index used by the federal Centers for Medicare and Medicaid Services to measure changes in the costs of providing inpatient services by hospitals that are excluded from the Medicare prospective payment system.

(h) Nothing in this section shall prohibit an employer or insurer from contracting with a medical provider for reimbursement rates different from those prescribed in the official medical fee schedule.

(i) Except as provided in Section 4626, the official medical fee schedule shall not apply to medical-legal expenses, as that term is defined by Section 4620.

(j) The following Medicare payment system components may not become part of the official medical fee schedule until January 1, 2005:

(1) Inpatient skilled nursing facility care.

(2) Home health agency services.

(3) Inpatient services furnished by hospitals that are exempt from the prospective payment system for general acute care hospitals.

(4) Outpatient renal dialysis services.

(k) Notwithstanding subdivision (a), for the calendar years 2004 and 2005, the existing official medical fee schedule rates for physician services shall remain in effect, but these rates shall be reduced by 5 percent. The administrative director may reduce fees of individual procedures by different amounts, but in no event shall the administrative director reduce the fee for a procedure that is currently reimbursed at a rate at or below the Medicare rate for the same procedure.

1 *(l)* Notwithstanding subdivision (a), the administrative
2 director, commencing January 1, 2006, shall have the authority,
3 after public hearings, to adopt and revise, no less frequently than
4 biennially, an official medical fee schedule for physician
5 services. If the administrative director fails to adopt an official
6 medical fee schedule for physician services by January 1, 2006,
7 the existing official medical fee schedule rates for physician
8 services shall remain in effect until a new schedule is adopted or
9 the existing schedule is revised.

O